

Remarks

Applicants and their undersigned attorney have reviewed the final Office Action of February 20, 2007 in the above-identified patent application, together with the prior art references cited and relied on by the Examiner in the rejections of the claims. Applicant has amended the application and believes that the invention is not anticipated by, and is not obvious in light of, the prior art. Reexamination and reconsideration of the application, and allowance of the claims is respectfully requested.

Applicant also acknowledges with appreciation the interview including Examiner Cajilig, Examiner Safavi, the undersigned and Mr. Staub for Elko Products on April 23, 2007. Each independent claim was discussed in the interview. Applicant's main thrust was that the clip of Stevens does not disclose clip of the subject application nor does the Stevens clip inherently perform or act like the subject clip. To this end, Applicant demonstrated a clip in accordance with the currently amended claims. In particular, Applicant demonstrated how the subject clip is adapted to be bent. Applicant also demonstrated the flat/planar aspect of the installed subject clip and explained the benefits of the clip residing in a single plane. Applicant also demonstrated the clip taught by U.S. Patent No. 6,735,907 to Stevens. Applicant inquired about disclaiming a fastener or tang. Finally, Applicant inquired about the requirements and evidence to support a finding of commercial success as support for nonobviousness of the invention.

Claims 42, 55, 61-62, and 65 of the application are currently rejected under 35 U.S.C. § 102 as being anticipated by Stevens. Applicant is familiar with the Stevens references, sells gutter covers/panels to Stevens, and also identified the Stevens reference in an Information Disclosure Statement, as evidenced in the file jacket of the subject application. The subject gutter-cover system improves upon the Stevens design in several ways.

Significantly, the clip in Stevens is attached via a fastener to a gutter (see the Abstract of the Invention for the '907 patent). This mechanism requires a "tang" through which a screw or fastener mounts the Stevens clip to a gutter. Because the clip exists in at least two planes (i.e., the tang is perpendicular to the main body of the Stevens clip), the clip is more difficult to store, handle, manufacture, ship, and install. As a result, installation times are increased, holes for the associated fastener are required in the customer's gutters, and the manufacturing and shipping costs for the clip are relatively high. The present invention improves upon this clip. The comparative success of the Elko clip and system relative to the Stephens clip and system is clearly illustrated in paragraph 9 of Mr. Staub's attached Declaration.

Applicant maintains that the Stevens specification does not teach a clip with a lever adapted to be bent around a hinge. As demonstrated by Applicant, this is not an inherent feature of the Stevens reference.

In addition, Applicant has amended claim 42 to specify that the body portion of the subject clip exists in a single plane, as illustrated in Figures 5-12. In other words, the clip includes two planar sides without any

'appendages' or tangs projecting along a plane that would intersect the plane defined by the body of the clip. Applicant has also amended the written description to further explain this aspect of the illustrated and disclosed clip. No new matter is added to the specification (see figures 5-12). The positive limitation that the clip body exists in a single plane is not taught by the Stevens reference. In fact, Stevens teaches away from a planar clip in that Stevens argues a fastener is required to secure a gutter clip.

As Stevens does not disclose each and every element of the independent claims, Stevens cannot anticipate the independent claims, or any claims depending therefrom, under 35 USC 102. Applicant respectfully requests reconsideration of the anticipation rejection.

The present Office Action also rejects, under 35 U.S.C. 103(a), claims 43-48, 56, 63, 66-69 and 74-79 as being unpatentable over Stevens in view of Doussot et al. (U.S. Patent No. 5,426,832). As noted above, applicant disagrees that Stevens teaches a locking lever joined to the body portion by a hinge wherein the locking lever is adapted to be bent at the hinge to bring a jaw into a locking position against a gutter. Additionally, and as discussed in the interview, Stevens does not teach a gutter clip that exists in a single plane. Stevens and Doussot also do not teach a bending slot with the claimed structure or dimensions. Applicant maintains the remarks from the most recent response that the cited reference cannot properly be combined to render the present invention obvious under §103 because the Doussot reference is not analogous to the subject invention.

Doussot does not teach a resilient locking lever. The Doussot bending slot is only operable when structure from the associated seat is selectively placed or “popped into” in the slot. The bending slot releases the locking jaws as soon as the seat structure is disengaged from the slot. On the other hand, the bending slot of the present invention operates a resilient locking lever to lock the clip to a gutter until disassembled. The locking lever must be forcibly released to disassemble the system. For example, an installer could use a screw driver to leverage the locking jaws closed via the bending slot. The clip does not “unlock” when the installer removes the screw driver from the bending slot.

In addition, the subject invention cannot be said to be a mere change of size relative to the combined references. Applicant would agree that mere scaling up or down of a prior art process or product would not be patentable. However, neither of the cited references teaches the dimensions or structure of the subject invention. The claimed product operates differently and has a different structure. Therefore, it cannot be said that the only difference between the prior art and the subject claims is a recitation of relative dimensions of the claimed device (see MPEP 2144.04).

The specific ratios discussed in the dependent claims are also not a mere change in size because the ratios relate the dimensions of one aspect of the clip to another. Regardless of the size of the clip, only the subject inventor determined and disclosed the dimensional ratios that provide for the operation of the claimed clip. The cited references do not recognize that the concept of

the subject application was desirable, much less doable. The bottom line is that it is not obvious to accomplish what the Stevens reference was intentionally working to avoid (i.e., the lack of a fastener).

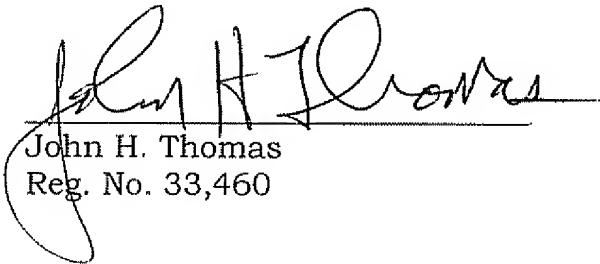
Applicant has amended the claims as rejected under 35 USC 103 in the Office Action to include the positive recitation that the clip exists in a single plane. In light of the above comments and amendments, reexamination is respectfully requested.

In further support of the non-obviousness of the present invention, Applicant is submitting herewith the Declaration of Timothy G. Staub, the President of Elko Products and Gutter Genius, LLC. As is apparent from the Staub Declaration, the present invention has enjoyed significant commercial success due specifically to the claimed structure of the gutter cover system and clip. The relative success of the Elko Product compared to the Stevens product is also discussed. The commercial success attributable to the subject gutter cover system is clearly connected to the structure and operation of the claimed clip. In fact, The Gutter Genius entity is working to create gutter protection franchises built around the claimed product.

For any one or more of the foregoing reasons, Applicant respectfully submits that the claims are in condition for allowance. Favorable action is requested hereon. In order to ensure full consideration of the above remarks and attached Declaration, applicant submits herewith a request for continuing examination with the requisite fee. Applicant respectfully requests an interview if the Examiner feels there are any remaining issues.

It is believed that there are no fees associated with this filing. However, in the event the calculations are incorrect, the Commissioner is hereby authorized to charge any deficiencies in fees or credit any overpayment associated with this communication to Deposit Account No. 50-2127.

Respectfully Submitted,


John H. Thomas
Reg. No. 33,460

Date: June 29, 2007

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PATENT
ATTORNEY DOCKET NO. ELKO 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David G. Filippi)
Application No.: 10/798,779) Group Art Unit: 3637
Filed: March 12, 2004)
For: GUTTER COVER SYSTEM) Examiner: Christine T. Cajilig
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Declaration by Timothy Staub

Dear Sir:

I, Timothy G. Staub, declare and say:

1. I am President and CEO of Elko Products, the assignee of record. I am also President of Gutter Genius, LLC. I have studied the Office Action of February 20, 2007 in this case and the amended claims presented concurrently herewith. Similarly, I have restudied the present application. I submit this Declaration in support of patentability of the present application.

2. The claims as amended capture the commercial embodiment of the Elko "GuttaGard" gutter protection system and gutter clip. Specifically, the GuttaGard system includes a solid sheet with one longitudinal edge formed into a curl. The cover extends downwardly and outwardly from the lowermost edge of a roof so that the curl

extends downwardly toward a gutter. The GuttaGard clip is a flat body of a given thickness. Because the GuttaGard system eliminates fasteners found in other gutter protection clips, the entire clip exists within a single plane. The clip includes a first throat adapted to engage the cover's curl. An optional second throat engages the wall of a gutter (vertical or horizontal wall). The clip provides a locking lever adjacent to the second throat. The lever has a hinge so that the first locking lever is adapted to be bent at the hinge to lock the second throat onto the gutter.

3. Even without fasteners, the GuttaGard clip provides an effective mechanism to positively secure the gutter cover in the proper position on the gutter. The clip also securely holds the gutter cover during high winds or inclement weather. The structure of the GuttaGard clip makes it easy to install and relatively inexpensive to produce.

4. Consumers of the GuttaGard system and clip include gutter installers and residential and commercial end users. End users have very specific demands regarding the price, appearance, and functionality of gutter cover systems. I have found the unique gutter cover system and clip of the present invention to be successful with gutter installers and end users. The success of the gutter cover system and gutter clip of the subject application is the direct result of our product, as currently claimed, to meet these end user demands.

5. The gutter cover system and clip are most commonly sold via gutter installers who present various gutter protection options to the consumer. The system and clip provide advantages over the cited Stevens reference and other prior art system during installation of the product. As noted, the product is easy to install, while being highly effective and reliable (less service calls for installers). The quick system installation

allows the professional installer to visit more residences or commercial sites. This results in lowered labor costs and the ability to reach more customers. In addition, relatively little training or experience is required to install the gutter cover system. Gutter installers, therefore, suggest our product to end-users. Well over 50% of our gutter installer customers now sell our product exclusively. In other words, of the gutter installers that have experienced our product, a majority of the installers no longer sell any competing systems or products.

6. Gutter installers emphasize to consumers the low profile of our planar clip as well as the fact that the system is installed without fasteners passing through the consumer's gutter. The ability to bend the claimed clip provides a quick-connect clip not found in Stevens' or other prior art references. Residential consumers routinely select our product as the installers are enthused about our product, including the reliability it provides and the ease of installation.

7. Elko Products does not engage in advertising of any note. In 2006, Elko Products spent less than \$1,000 for advertising the product. The success of our product is not due to significant advertising or "cut throat" pricing. The product, as claimed in the patent application, is a superior product that gutter installers continue to learn about by word-of-mouth.

8. I have searched the accounting and financial documents of Elko Products and determined the following:

- From October 7, 2004 when Elko Products purchased the rights to the new clip through April 30, 2007 Elko Products generated overall revenue of \$1,248,351 in total sales.

- Over \$1,212,540 dollars of the revenue from October 7, 2004 through April 30, 2007 is directly attributable to sales of the claimed gutter cover system and gutter cover clip.
- Gross profits from GuttaGard were approximately \$620,670 from October 7, 2004 through April 30, 2007.
- Sales from GuttaGard system, as claimed by the subject invention, compare to sales of \$4,452 for the previous Elko clip that was obsolesced by the subject invention for the period October 7, 2004 through April 30, 2007.
- Elko Products has sold more than 2 million feet of gutter cover system in accordance with the claims of the application in 2006. This is equivalent to about 14,285 households (assuming an average household gutter profile of 140 feet).
- Elko Products has built a national reputation for manufacturing and marketing the GuttaGard product with the Gutter Genius clip (the subject invention) as a high quality, easy-to-install alternative to the highly advertised gutter protection brands, and has secured a protected position as a direct result of the subject invention.

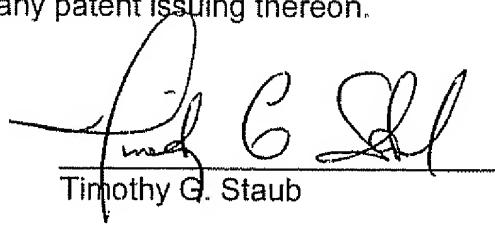
9. Elko Products is the exclusive and sole supplier of gutter covers to Stevens, owner of the primary reference cited in the Office Action. By way of comparison, Elko Products supplied 20,400 feet of gutter covers to Stevens in from October 7, 2004 through April 30, 2007 compared to an estimated 2,100,000 feet of our own proprietary gutter cover system.

10. Gutter installation and gutter cover products are currently local or regional in nature. Therefore, it is impossible to calculate the market share of the claimed gutter cover system as a whole. Sales tend to grow by word-of-mouth. Sales are particularly strong in North Carolina, Virginia, South Carolina and Georgia. While it is impossible to accurately forecast demand and market share figures either nationally or regionally, we anticipate our market share in Raleigh, North Carolina in particular to be approximately 10%, and in Richmond, Virginia to be approximately 4-5%. We do anticipate continued growth in volume and market share as a direct consequence of the attributes of the subject invention. Elko Products was recently invited to demonstrate the product on and for the QVC network.

11. Largely due to the commercial success of the claimed gutter cover system and clip, the Gutter Genius, LLC entity was formed to create and pursue gutter protection franchises as a professionally installed system and as an independent seller of self installed gutter protection system (under the Gutter Genius DIY product nomenclature).

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 5/29/07



The image shows a handwritten signature in black ink, consisting of stylized initials and a surname. Below the signature, the name "Timothy G. Staub" is printed in a standard font.

Timothy G. Staub